

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

WILEY GILL,

Petitioner,

v.

K. HARRINGTON, Warden,

Respondent.

Case No. CV 09-9508 DOC (JCG)

**ORDER ACCEPTING FINDINGS,
CONCLUSIONS AND
RECOMMENDATIONS OF UNITED
STATES MAGISTRATE JUDGE AND
DENYING CERTIFICATE OF
APPEALABILITY**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all of the records herein, the Report and Recommendation of the United States Magistrate Judge, and Petitioner's Objections to the Report and Recommendation, and has made a *de novo* determination. The Court accepts the Magistrate Judge's Report and Recommendation.

In his Objections, Petitioner essentially restates the arguments made in the Petition and Reply. Those arguments lack merit for the reasons stated in the Report and Recommendation.

Petitioner's request is denied as an evidentiary hearing is not required in this case. *See Cullen v. Pinholster*, 131 S.Ct. 1388, 1398 (2011); *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("[I]f the record refutes the applicant's factual allegations

1 or otherwise precludes habeas relief, a district court is not required to hold an
2 evidentiary hearing.”).

3 Additionally, for the reasons stated in the Report and Recommendation, the
4 Court finds that Petitioner has not made a substantial showing of the denial of a
5 constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v.*
6 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate of
7 appealability.

8 Accordingly, having made a *de novo* determination of those portions of the
9 Report and Recommendation to which objection was made, IT IS ORDERED
10 THAT:

- 11 1. Petitioner’s request for an evidentiary hearing is denied.
- 12 2. Judgment shall be entered dismissing the action with prejudice.
- 13 3. The Clerk shall serve copies of this Order and the Judgment herein on
14 the parties.
- 15 4. A Certificate of Appealability is denied.

16
17
18 DATED: December 14, 2011



HON. DAVID O. CARTER
UNITED STATES DISTRICT JUDGE